

# **EXHIBIT D**

Phillip Low

January 14, 2006

Boulder, CO

1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LP MATTHEWS, LLC, )

Plaintiff, )

v. )

BATH & BODY WORKS, INC.; ) CASE NO.:

LIMITED BRANDS, INC.; ) 04-CV-01507 SLR

KAO BRANDS CO. (f/k/a THE )

ANDREW JERGENS COMPANY); )

and KAO CORPORATION, )

Defendants. )

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DEPOSITION OF PHILLIP LOW

Saturday, January 14, 2006

Reported by:

Craig L. Knowles, CM

Henderson Legal Services  
(202) 220-4158

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2	<p>1 Boulder, Colorado</p> <p>2 Saturday, January 14, 2006</p> <p>3</p> <p>4 Deposition of PHILLIP LOW, a witness</p> <p>5 herein, called for examination by counsel for</p> <p>6 Defendants in the above-entitled matter, pursuant</p> <p>7 to notice and the Federal Rules of Civil Procedure,</p> <p>8 the witness being previously duly sworn by CRAIG</p> <p>9 KNOWLES, a Notary Public in and for the State of</p> <p>10 Colorado, taken at the Boulder Marriott, Telluride</p> <p>11 Room, 2660 Canyon Boulevard, Boulder, Colorado, at</p> <p>12 9:23 a.m., on Saturday, January 14, 2006, and the</p> <p>13 proceedings being taken down in Stenotype by CRAIG</p> <p>14 KNOWLES and transcribed under his direction.</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	4	<p>1 APPEARANCES (Cont'd)</p> <p>2</p> <p>3 For Defendants Bath &amp; Body Works and Limited</p> <p>4 Brands:</p> <p>5 John F. Ward, Esquire</p> <p>6 WARD &amp; OLIVO</p> <p>7 708 Third Avenue</p> <p>8 New York, New York 10017</p> <p>9 212-697-6262</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>
3	<p>1 APPEARANCES</p> <p>2</p> <p>3 For Plaintiff:</p> <p>4 Robert A. Auchter, Esquire</p> <p>5 Jason R. Buratti, Esquire</p> <p>6 ROBINS, KAPLAN, MILLER &amp; CIRESI, LLP</p> <p>7 Suite 1200</p> <p>8 1801 K Street, Northwest</p> <p>9 Washington, D.C. 20006-1307</p> <p>10 202-775-0725</p> <p>11</p> <p>12 For Defendants KAO Corp. and KAO Brands:</p> <p>13 Stephen G. Baxter, Ph.D., Esquire</p> <p>14 Richard L. Chinn, Ph.D., Esquire</p> <p>15 OBLON, SPIVAK, McCLELLAND, MAIER &amp;</p> <p>16 NEUSTADT, P.C.</p> <p>17 1940 Duke Street</p> <p>18 Alexandria, Virginia 22314</p> <p>19 703-413-3000</p> <p>20</p> <p>21</p> <p>22</p>	5	<p>1 CONTENTS</p> <p>2 THE WITNESS: PAGE NO.</p> <p>3 PHILLIP LOW</p> <p>4 By Mr. Ward..... 6</p> <p>5 By Mr. Baxter..... 92</p> <p>6</p> <p>7 E-X-H-I-B-I-T-S</p> <p>8 LOW EXHIBIT NO. PAGE NO.</p> <p>9 1 Copy of Assignment, LPM 000012/14 38</p> <p>10 2 One-page handwritten document PL 0002 39</p> <p>11 3 Agreement PL 0001 44</p> <p>12 4 Promissory Note PL 0003/4 47</p> <p>13 5 Copy of envelope from Mr. Brady PL 00005 48</p> <p>14 6 Letter, Low to Ingram, 6/16/93 52</p> <p>15 7 Letter, Greenspan to Low, 6/26/93,</p> <p>16 PL 0007 54</p> <p>17 8 Envelope, Greenspan to Low, 6/21/93 57</p> <p>18 9 Undated Letter, Greenspan to Low PL 0009 75</p> <p>19 10 Copy of check stub PL 0010 78</p> <p>20 11 Three-page document, 11/17/89 DG6001/03 109</p> <p>21 12 Two-page document DG3271/72 113</p> <p>22</p>

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<p style="text-align: right;">6</p> <p>1 PROCEEDINGS:</p> <p>2 - - -</p> <p>3 Whereupon,</p> <p>4 PHILLIP LOW,</p> <p>5 called for examination by counsel for Defendants</p> <p>6 and, having been previously duly sworn to the</p> <p>7 truth, the whole truth and nothing but the truth,</p> <p>8 was examined and testified further upon his oath</p> <p>9 as follows:</p> <p>10 - - -</p> <p>11 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>12 BATH &amp; BODY WOKS and LIMITED BRANDS</p> <p>13 BY MR. WARD:</p> <p>14 Q. Good morning, Mr. Low.</p> <p>15 A. Good morning.</p> <p>16 Q. My name is John Ward, I'm with Ward &amp; Olivo</p> <p>17 in New York, and I represent Limited Brands and</p> <p>18 Bath3 &amp; Body Works in this action.</p> <p>19 Have you ever been deposed before?</p> <p>20 A. Yes.</p> <p>21 Q. Would you tell me what were the</p> <p>22 circumstances of that?</p>	<p style="text-align: right;">8</p> <p>1 Q. Okay. Before that, school?</p> <p>2 A. Before that I was in school.</p> <p>3 Q. Did you graduate from high school?</p> <p>4 A. I did.</p> <p>5 Q. Any college?</p> <p>6 A. None.</p> <p>7 Q. Any technical training?</p> <p>8 A. Nope.</p> <p>9 Q. It's my understanding that you are the man</p> <p>10 who had the idea to use orange in a cleaning</p> <p>11 composition, is that true?</p> <p>12 A. That's true.</p> <p>13 Q. Can you tell me how that came about, how'd</p> <p>14 you get that idea?</p> <p>15 A. I was installing windows, and when you</p> <p>16 install windows, you have polyurethane type</p> <p>17 sealants that you use, two-part. And you get it</p> <p>18 all over your hands.</p> <p>19 Q. Tell me, what --</p> <p>20 A. Nothing really cleans it off.</p> <p>21 Q. Take me through the process. So you are</p> <p>22 installing a window.</p>
<p style="text-align: right;">7</p> <p>1 A. It was a building lawsuit.</p> <p>2 Q. Were you the plaintiff?</p> <p>3 A. We were.</p> <p>4 Q. How did it turn out?</p> <p>5 A. We won.</p> <p>6 Q. Good. Just so you know, you know, I'm</p> <p>7 going to ask a series of questions, you'll answer.</p> <p>8 You can't nod or make sounds that the court</p> <p>9 reporter can't record for us.</p> <p>10 And any time you feel like you'd like to</p> <p>11 take a break, say the word.</p> <p>12 A. Okay.</p> <p>13 Q. What do you do for a living?</p> <p>14 A. I have a home improvement and construction</p> <p>15 company.</p> <p>16 Q. How long have you had that?</p> <p>17 A. Ten years.</p> <p>18 Q. What did you do before that?</p> <p>19 A. I was a subcontract window installer.</p> <p>20 Q. Do you recall how long you were doing that</p> <p>21 for?</p> <p>22 A. Yeah, I have been doing that since 1979.</p>	<p style="text-align: right;">9</p> <p>1 A. Right.</p> <p>2 Q. You've got a frame. Run us through it.</p> <p>3 A. Well, you have a window opening. You take</p> <p>4 out the wood sashes. It depends how the window is</p> <p>5 measured, how the new system is going to go in.</p> <p>6 You are from the east, right?</p> <p>7 Q. Yes. You can tell, huh?</p> <p>8 A. You have a lot of wood windows, a lot of</p> <p>9 historic looking products, right.</p> <p>10 Q. Yes, indeed.</p> <p>11 A. Okay. What we will do is, we will take out</p> <p>12 the wooden sashes, leave the buck frame in. Then</p> <p>13 what we do is, we have a system that is</p> <p>14 historically replicated to cap over all of the old</p> <p>15 wood on the outside. And it's a new window frame</p> <p>16 that goes in on the inside and has new sashes and</p> <p>17 everything else. Then we seal up the outside, sort</p> <p>18 of a panning system out there. We seal up the</p> <p>19 panning system to make it weather tight. We put</p> <p>20 trims on the inside and seal that up to make it</p> <p>21 weather tight.</p> <p>22 Q. All right.</p>

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<p style="text-align: right;">10</p> <p>1 A. The caulking that we have to use, they</p> <p>2 need to have a very high flexibility rate. Have to</p> <p>3 be real durable stuff.</p> <p>4 Q. The reason is?</p> <p>5 A. So that they last 20 years. Ten year</p> <p>6 warranty, but if you go with a little bit stronger</p> <p>7 product, you don't -- you can't use a regular latex</p> <p>8 household type product. You have to use something</p> <p>9 that has kind of more your industrial adhesions,</p> <p>10 movements and those kind of things.</p> <p>11 Q. Okay.</p> <p>12 A. So that is the window process.</p> <p>13 Q. Thanks. I got new windows coming in, so I</p> <p>14 want to know what I'm looking forward to.</p> <p>15 A. Yours might be different. This is</p> <p>16 commercial. You may get vinyls.</p> <p>17 Q. Well, we'll see. Thank you, anyhow. So</p> <p>18 now we are up to, did you say polyurethane?</p> <p>19 A. Yeah, polyurethane type sealants.</p> <p>20 Q. What do you do?</p> <p>21 A. Use a caulking gun, they come in tubes, use</p> <p>22 a caulking gun or there's big sausages, different</p>	<p style="text-align: right;">12</p> <p>1 does the stuff start to harden?</p> <p>2 A. It's an oil based product so it stains, you</p> <p>3 get stains on your hands. It can last up to a week</p> <p>4 if you don't try to use something to take it off.</p> <p>5 Q. Okay.</p> <p>6 A. The only things we found that works is</p> <p>7 toluene or acetone or gasoline, the only stuff that</p> <p>8 removes this stuff.</p> <p>9 Q. Stuff like Goop doesn't work?</p> <p>10 A. No, Goop didn't work, pumices didn't work,</p> <p>11 none of that stuff works.</p> <p>12 Q. I think we are probably up on the orange</p> <p>13 part?</p> <p>14 A. We are up to the orange part. Okay?</p> <p>15 Q. Unless you tell me otherwise.</p> <p>16 A. This was like 10:30 at night and it was the</p> <p>17 first week in December because the Parade of lights</p> <p>18 was going on down below.</p> <p>19 Q. Do you remember the year?</p> <p>20 A. Yeah, it was 1988.</p> <p>21 Q. Okay?</p> <p>22 A. We were -- actually, I was working by</p>
<p style="text-align: right;">11</p> <p>1 means of putting this stuff on. It gets all over</p> <p>2 you because you are using your fingers to tool it.</p> <p>3 Q. Fill in the spots?</p> <p>4 A. Yeah, when you are caulking, it's like</p> <p>5 icing on the cake. It's the pretty part, yet it's</p> <p>6 the function part, too, because it weatherproofs,</p> <p>7 stains.</p> <p>8 You are also using a product called Fooz,</p> <p>9 which is manufactured out of parts, vinyl parts</p> <p>10 that you use to fill cracks and crevices and stuff</p> <p>11 like that, hardens up.</p> <p>12 All this stuff gets on your hands, because,</p> <p>13 you know, even ink gets on your hands, I don't know</p> <p>14 how it does, but it gets everywhere.</p> <p>15 Q. Sure.</p> <p>16 A. That is how the caulking gets on your</p> <p>17 hands.</p> <p>18 Now with respect to the orange product, is</p> <p>19 that where you want to go.</p> <p>20 Q. In a second.</p> <p>21 A. Okay.</p> <p>22 Q. Tell me. You have the caulk on your hands,</p>	<p style="text-align: right;">13</p> <p>1 myself, 10:30 at night, trying to caulk these</p> <p>2 windows up.</p> <p>3 Q. Obviously it was your business.</p> <p>4 A. My business.</p> <p>5 Q. I understand that part.</p> <p>6 A. I was trying to caulk the windows, 10th</p> <p>7 floor, and my wife packed me a lunch and the only</p> <p>8 thing I had left to eat was an orange, I needed</p> <p>9 something.</p> <p>10 Q. Sure.</p> <p>11 A. Work late obviously, wanted to get done.</p> <p>12 So I went to eat the orange, I'm peeling the</p> <p>13 orange, and I notice all this black stuff all over</p> <p>14 the orange peel. I'm thinking, now I got to go --</p> <p>15 something is contaminating my food. I didn't know</p> <p>16 what it was.</p> <p>17 Q. Right.</p> <p>18 A. I'm sitting here peeling this orange and</p> <p>19 it's turning black.</p> <p>20 Q. The rind is turning back?</p> <p>21 A. Yes, the orange, everything I'm touching on</p> <p>22 the orange is starting to turn black.</p>

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<p style="text-align: right;">14</p> <p>1 Q. So you can't even eat your orange now, you 2 are stuck?</p> <p>3 MR. BURATTI: Object to form.</p> <p>4 A. So I go and I wash my hands and I notice 5 that my fingertips are clean.</p> <p>6 BY MR. WARD:</p> <p>7 Q. Uh-huh.</p> <p>8 A. So I went back and I'm like what the heck 9 happened here. So I go back and I start looking at 10 the orange, and I started messing with the orange 11 peels. The orange juice, itself. Everything else. 12 And found out if I squeezed the rind on my hand, 13 that stuff dissolved, loosened up and I could 14 actually wipe it off.</p> <p>15 Q. You started to play around with it?</p> <p>16 A. Right.</p> <p>17 MR. BURATTI: Objection to form.</p> <p>18 BY MR. WARD:</p> <p>19 Q. What happened next.</p> <p>20 A. Obviously, I was excited because I thought 21 I could create a natural cleaning product that 22 would remove stuff off your hands that nothing else</p>	<p style="text-align: right;">16</p> <p>1 was doing, just like we all were. I didn't want to 2 be a windows installer forever. There didn't seem 3 to be any money in it. So I thought you know, I 4 called him up and I said you can't believe what I 5 just discovered.</p> <p>6 Q. Do you recall, was he your personal 7 accountant or the business's accountant?</p> <p>8 A. He was both. Well, you know at the time my 9 personal was my business.</p> <p>10 Q. Go ahead. So you give him a call. Do you 11 remember when that was?</p> <p>12 A. It would have been the next day.</p> <p>13 Q. Really. You were that excited?</p> <p>14 A. Oh, yeah, absolutely.</p> <p>15 MR. BURATTI: Objection to form.</p> <p>16 BY MR. WARD:</p> <p>17 Q. Okay.</p> <p>18 A. So anyway, I called him up and I told him 19 what the deal was, that I had found and he said, 20 Phil, you're a genius. And he said, let's -- I 21 said, you know, you got -- you're a chemist kind of 22 guy, maybe we can make a hand cleaner, some sort of</p>
<p style="text-align: right;">15</p> <p>1 would.</p> <p>2 Q. So even this first time it was working 3 better than the things you traditionally used to 4 clean your hands?</p> <p>5 MR. BURATTI: Objection. Ambiguous.</p> <p>6 A. I don't know, I didn't say that.</p> <p>7 BY MR. WARD:</p> <p>8 Q. I'm asking, not trying to tell.</p> <p>9 A. All I did, all I did was find that the 10 orange oil removed the stuff off my hands.</p> <p>11 Q. Were you surprised?</p> <p>12 A. I was surprised.</p> <p>13 Q. So what did you do about it?</p> <p>14 A. Well, then what I did is I called up Doug 15 Greenspan.</p> <p>16 Q. Why'd you do that?</p> <p>17 A. Because Doug, Doug and I had a fairly good 18 relationship. He was our accountant. And we knew 19 a little bit of his background. I knew that he had 20 an M.B.A. in business, and I knew that he had a 21 minor in chemistry, and I knew that he was looking 22 for, you know, something other than doing what he</p>	<p style="text-align: right;">17</p> <p>1 a natural cleaner that's going to work to take this 2 stuff off of our construction industry's hands.</p> <p>3 Q. All right. So what happened next?</p> <p>4 A. Then --</p> <p>5 Q. You talk on the phone, then --</p> <p>6 A. Yeah, well, I -- I hooked up with him. 7 That weekend, because it was -- I believe it was 8 a -- the Parade of Lights goes on Friday nights and 9 on Saturday. This would have been a Friday night, 10 caution I went over to his place on Saturday, so I 11 went on over there.</p> <p>12 Q. Okay.</p> <p>13 A. And we proceeded to try to find some orange 14 oil so that we could start making concoctions.</p> <p>15 Q. You didn't bring a bag of oranges over with 16 you?</p> <p>17 A. You know, we may have gotten a bag of 18 oranges. You know, I know that I had shown to him 19 that it actually worked, and he thought -- the 20 citric acid in there would naturally dissolve 21 petroleum products. Oh, you're a genius, I never 22 thought of that. So, anyway.</p>